

APPENDIX B

25 CFR PART 900

INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT AMENDMENTS, SUBPART F

STANDARDS FOR TRIBAL OR TRIBAL ORGANIZATION MANAGEMENT SYSTEMS

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change to the scope or funding of a program, functions, services, or activities has been proposed by the Indian tribe or tribal organization. Proposals to renew term contracts with DOI agencies other than the Bureau of Indian Affairs may be reviewed under the declination criteria.

Subpart F—Standards for Tribal or Tribal Organization Management Systems

General

§ 900.35 What is the purpose of this subpart?

This subpart contains the minimum standards for the management systems used by Indian tribes or tribal organizations when carrying out self-determination contracts. It provides standards for an Indian tribe or tribal organization's financial management system, procurement management system, and property management system.

§ 900.36 What requirements are imposed upon Indian tribes or tribal organizations by this subpart?

When carrying out self-determination contracts, Indian tribes and tribal organizations shall develop, implement, and maintain systems that meet these minimum standards, unless one or more of the standards have been waived, in whole or in part, under section 107(e) of the Act and Subpart K.

§ 900.37 What provisions of Office of Management and Budget (OMB) circulars or the "common rule" apply to self-determination contracts?

The only provisions of OMB Circulars and the only provisions of the "common rule" that apply to self-determination contracts are the provisions adopted in these regulations, those expressly required or modified by the Act, and those negotiated and agreed to in a self-determination contract.

§ 900.38 Do these standards apply to the subcontractors of an Indian tribe or tribal organization carrying out a self-determination contract?

An Indian tribe or tribal organization may require that some or all of the standards in this subpart be imposed upon its subcontractors when carrying out a self-determination contract.

§ 900.39 What is the difference between a standard and a system?

(a) Standards are the minimum baseline requirements for the performance of an activity. Standards establish the "what" that an activity should accomplish.

(b) Systems are the procedural mechanisms and processes for the day-to-day conduct of an activity. Systems are "how" the activity will be accomplished.

§ 900.40 When are Indian tribe or tribal organization management standards and management systems evaluated?

(a) Management standards are evaluated by the Secretary when the Indian tribe or tribal organization submits an initial contract proposal.

(b) Management systems are evaluated by an independent auditor through the annual single agency audit report that is required by the Act and OMB Circular A-128.

§ 900.41 How long must an Indian tribe or tribal organization keep management system records?

The Indian tribe or tribal organization must retain financial, procurement and property records for the minimum periods described below. Electronic, magnetic or photographic records may be substituted for hard copies.

(a) *Financial records.* Financial records include documentation of supporting costs incurred under the contract. These records must be retained for three years from the date of submission of the single audit report to the Secretary.

(b) *Procurement records.* Procurement records include solicitations, purchase orders, contracts, payment histories and records applicable of significant decisions. These records must be retained for three years after the Indian tribe or tribal organization or subcontractors make final payment and all other pending matters are closed.

(c) *Property management records.* Property management records of real and personal property transactions must be retained for three years from the date of disposition, replacement, or transfer.

(d) *Litigation, audit exceptions and claims.* Records pertaining to any litigation, audit exceptions or claims requiring management systems data must be retained until the action has been completed.

Standards for Financial Management Systems

§ 900.42 What are the general financial management system standards that apply to an Indian tribe carrying out a self-determination contract?

An Indian tribe shall expend and account for contract funds in accordance with all applicable tribal laws, regulations, and procedures.

§ 900.43 What are the general financial management system standards that apply to a tribal organization carrying out a self-determination contract?

A tribal organization shall expend and account for contract funds in accordance with the procedures of the tribal organization.

§ 900.44 What minimum general standards apply to all Indian tribe or tribal organization financial management systems when carrying out a self-determination contract?

The fiscal control and accounting procedures of an Indian tribe or tribal organization shall be sufficient to:

(a) Permit preparation of reports required by a self-determination contract and the Act; and

(b) Permit the tracing of contract funds to a level of expenditure adequate to establish that they have not been used in violation of any restrictions or prohibitions contained in any statute that applies to the self-determination contract.

§ 900.45 What specific minimum requirements shall an Indian tribe or tribal organization's financial management system contain to meet these standards?

An Indian tribe or tribal organization's financial management system shall include provisions for the following seven elements.

(a) *Financial reports.* The financial management system shall provide for accurate, current, and complete disclosure of the financial results of self-determination contract activities. This includes providing the Secretary a completed Financial Status Report, SF 269A, as negotiated and agreed to in the self-determination contract.

(b) *Accounting records.* The financial management system shall maintain records sufficiently detailed to identify the source and application of self-determination contract funds received by the Indian tribe or tribal organization. The system shall contain sufficient information to identify contract awards, obligations and unobligated balances, assets, liabilities, outlays, or expenditures and income.

(c) *Internal controls.* The financial management system shall maintain effective control and accountability for all self-determination contract funds received and for all Federal real property, personal property, and other assets furnished for use by the Indian tribe or tribal organization under the self-determination contract.

(d) *Budget controls.* The financial management system shall permit the comparison of actual expenditures or outlays with the amounts budgeted by

the Indian tribe or tribal organization for each self-determination contract.

(e) *Allowable costs.* The financial management system shall be sufficient to determine the reasonableness, allowability, and allocability of self-determination contract costs based upon the terms of the self-determination contract and the Indian tribe or tribal

organization's applicable OMB cost principles, as amended by the Act and these regulations. (The following chart lists certain OMB Circulars and suggests the entities that may use each, but the final selection of the applicable circular may differ from those shown, as agreed to by the Indian tribe or tribal organization and the Secretary.

Agreements between an Indian tribe or tribal organization and the Secretary currently in place do not require renegotiation.) Copies of these circulars are available from the Executive Office of the President, Publications Service, 725 17th Street N. W., Washington, D. C. 20503.

Type of tribal organization	Applicable OMB cost circular
Tribal Government	A-87, "Cost Principles for State, Local and Indian Tribal Governments."
Tribal private non-profit other than: (1) an institution of higher education, (2) a hospital, or (3) an organization named in OMB Circular A-122 as not subject to that circular.	A-122, "Cost Principles for Non-Profit Organizations."
Tribal educational institution	A-21, "Cost Principles for Educational Institutions."

(f) *Source documentation.* The financial management system shall contain accounting records that are supported by source documentation, e.g., canceled checks, paid bills, payroll records, time and attendance records, contract award documents, purchase orders, and other primary records that support self-determination contract fund expenditures.

(g) *Cash management.* The financial management system shall provide for accurate, current, and complete disclosure of cash revenues disbursements, cash-on-hand balances, and obligations by source and application for each Indian tribe or tribal organization, and subcontractor if applicable, so that complete and accurate cash transactions may be prepared as required by the self-determination contract.

§ 900.46 What requirements are imposed upon the Secretary for financial management by these standards?

The Secretary shall establish procedures, consistent with Treasury regulations as modified by the Act, for the transfer of funds from the United States to the Indian tribe or tribal organization in strict compliance with the self-determination contract and the annual funding agreement.

Procurement Management System Standards

§ 900.47 When procuring property or services with self-determination contract funds, can an Indian tribe or tribal organization follow the same procurement policies and procedures applicable to other Indian tribe or tribal organization funds?

Indian tribes and tribal organizations shall have standards that conform to the standards in this Subpart. If the Indian tribe or tribal organization relies upon standards different than those described below, it shall identify the standards it will use as a proposed waiver in the

initial contract proposal or as a waiver request to an existing contract.

§ 900.48 If the Indian tribe or tribal organization does not propose different standards, what basic standards shall the Indian tribe or tribal organization follow?

(a) The Indian tribe or tribal organization shall ensure that its vendors and/or subcontractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(b) The Indian tribe or tribal organization shall maintain written standards of conduct governing the performance of its employees who award and administer contracts.

(1) No employee, officer, elected official, or agent of the Indian tribe or tribal organization shall participate in the selection, award, or administration of a procurement supported by Federal funds if a conflict of interest, real or apparent, would be involved.

(2) An employee, officer, elected official, or agent of an Indian tribe or tribal organization, or of a subcontractor of the Indian tribe or tribal organization, is not allowed to solicit or accept gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to sub-agreements, with the following exemptions. The Indian tribe or tribal organization may exempt a financial interest that is not substantial or a gift that is an unsolicited item of nominal value.

(3) These standards shall also provide for penalties, sanctions, or other disciplinary actions for violations of the standards.

(c) The Indian tribe or tribal organization shall review proposed procurements to avoid buying unnecessary or duplicative items and ensure the reasonableness of the price. The Indian tribe or tribal organization should consider consolidating or

breaking out procurement to obtain more economical purchases. Where appropriate, the Indian tribe or tribal organization shall compare leasing and purchasing alternatives to determine which is more economical.

(d) The Indian tribe or tribal organization shall conduct all major procurement transactions by providing full and open competition, to the extent necessary to assure efficient expenditure of contract funds and to the extent feasible in the local area.

(1) Indian tribes or tribal organizations shall develop their own definition for "major procurement transactions."

(2) As provided in sections 7 (b) and (c) of the Act, Indian preference and tribal preferences shall be applied in any procurement award.

(e) The Indian tribe or tribal organization shall make procurement awards only to responsible entities who have the ability to perform successfully under the terms and conditions of the proposed procurement. In making this judgment, the Indian tribe or tribal organization will consider such matters as the contractor's integrity, its compliance with public policy, its record of past performance, and its financial and technical resources.

(f) The Indian tribe or tribal organization shall maintain records on the significant history of all major procurement transactions. These records may include, but are not limited to, the rationale for the method of procurement, the selection of contract type, the contract selection or rejection, and the basis for the contract price.

(g) The Indian tribe or tribal organization is solely responsible, using good administrative practice and sound business judgment, for processing and settling all contractual and administrative issues arising out of a procurement. These issues include, but

are not limited to, source evaluation, protests, disputes, and claims.

(1) The settlement of any protest, dispute, or claim shall not relieve the Indian tribe or tribal organization of any obligations under a self-determination contract.

(2) Violations of law shall be referred to the tribal or Federal authority having proper jurisdiction.

§ 900.49 What procurement standards apply to subcontracts?

Each subcontract entered into under the Act shall at a minimum:

- (a) Be in writing;
- (b) Identify the interested parties, their authorities, and the purposes of the contract;
- (c) State the work to be performed under the contract;
- (d) State the process for making any claim, the payments to be made, and the terms of the contract, which shall be fixed; and
- (e) Be subject to sections 7 (b) and (c) of the Act.

§ 900.50 What Federal laws, regulations, and Executive Orders apply to subcontractors?

Certain provisions of the Act as well as other applicable Federal laws, regulations, and Executive Orders apply to subcontracts awarded under self-determination contracts. As a result, subcontracts should contain a provision informing the recipient that their award is funded with Indian Self-Determination Act funds and that the recipient is responsible for identifying and ensuring compliance with applicable Federal laws, regulations, and Executive Orders. The Secretary and the Indian tribe or tribal organization may, through negotiation, identify all or a portion of such requirements in the self-determination contract and, if so identified, these requirements should be identified in subcontracts.

Property Management System Standards

§ 900.51 What is an Indian tribe or tribal organization's property management system expected to do?

An Indian tribe or tribal organization's property management system shall account for all property furnished or transferred by the Secretary for use under a self-determination contract or acquired with contract funds. The property management system shall contain requirements for the use, care, maintenance, and disposition of Federally-owned and other property as follows:

(a) Where title vests in the Indian tribe, in accordance with tribal law and procedures; or

(b) In the case of a tribal organization, according to the internal property procedures of the tribal organization.

§ 900.52 What type of property is the property management system required to track?

The property management system of the Indian tribe or tribal organization shall track:

- (a) Personal property with an acquisition value in excess of \$5,000 per item;
- (b) Sensitive personal property, which is all personal property that is subject to theft and pilferage, as defined by the Indian tribe or tribal organization. All firearms shall be considered sensitive personal property; and
- (c) Real property provided by the Secretary for use under the contract.

§ 900.53 What kind of records shall the property management system maintain?

The property management system shall maintain records that accurately describe the property, including any serial number or other identification number. These records should contain information such as the source, titleholder, acquisition date, cost, share of Federal participation in the cost, location, use and condition of the property, and the date of disposal and sale price, if any.

§ 900.54 Should the property management system prescribe internal controls?

Yes. Effective internal controls should include procedures:

- (a) For the conduct of periodic inventories;
- (b) To prevent loss or damage to property; and
- (c) To ensure that property is used for an Indian tribe or tribal organization's self-determination contract(s) until the property is declared excess to the needs of the contract consistent with the Indian tribe or tribal organization's property management system.

§ 900.55 What are the standards for inventories?

A physical inventory should be conducted at least once every 2 years. The results of the inventory shall be reconciled with the Indian tribe or tribal organization's internal property and accounting records.

§ 900.56 What maintenance is required for property?

Required maintenance includes the performance of actions necessary to keep the property in good working condition, the procedures recommended

by equipment manufacturers, and steps necessary to protect the interests of the contractor and the Secretary in any express warranties or guarantees covering the property.

§ 900.57 What if the Indian tribe or tribal organization chooses not to take title to property furnished or acquired under the contract?

If the Indian tribe or tribal organization chooses not to take title to property furnished by the government or acquired with contract funds, title to the property remains vested in the Secretary. A list of Federally-owned property to be used under the contract shall be included in the contract.

§ 900.58 Do the same accountability and control procedures described above apply to Federal property?

Yes, except that requirements for the inventory and disposal of Federal property are different.

§ 900.59 How are the inventory requirements for Federal property different than for tribal property?

There are three additional requirements:

(a) The Indian tribe or tribal organization shall conduct a physical inventory of the Federally-owned property and reconcile the results with the Indian tribe or tribal organization's property records annually, rather than every 2 years;

(b) Within 90 days following the end of an annual funding agreement, the Indian tribe or tribal organization shall certify and submit to the Secretary an annual inventory of all Federally-owned real and personal property used in the contracted program; and

(c) The inventory shall report any increase or decrease of \$5,000 or more in the value of any item of real property.

§ 900.60 How does an Indian tribe or tribal organization dispose of Federal personal property?

The Indian tribe or tribal organization shall report to the Secretary in writing any Federally-owned personal property that is worn out, lost, stolen, damaged beyond repair, or no longer needed for the performance of the contract.

(a) The Indian tribe or tribal organization shall state whether the Indian tribe or tribal organization wants to dispose of or return the property.

(b) If the Secretary does not respond within 60 days, the Indian tribe or tribal organization may return the property to the Secretary, who shall accept transfer, custody, control, and responsibility for the property (together with all associated costs).